

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ANTONIO ENRIQUEZ,

Case No. 3:21-cv-00085-ART-CSD

Plaintiff,

ORDER

v.

STATE OF NEVADA DEPARTMENT OF  
CORRECTIONS, *et al.*,

Defendants.

*Pro se* Plaintiff Antonio Enriquez brings this action under 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). Before the Court are: (1) the Report and Recommendation (“R&R” or “Recommendation”) of United States Magistrate Judge Craig S. Denney (ECF No. 51), recommending that Plaintiff’s motions for injunctive relief and/or a protective order (ECF Nos. 26, 27) be denied; (2) the R&R of Judge Denney (ECF No. 52) recommending that Plaintiff’s motion for summary judgment (ECF No. 37) be denied and that Defendants’ motion for summary judgment (ECF No. 48) be granted in part and denied in part; and (3) Plaintiff’s motion for judicial notice (ECF No. 56). For the reasons set forth in this order, the Court: (1) adopts as unobjected to Judge Denney’s R&R recommending that Plaintiff’s motions for injunctive relief and/or a protective order be denied; (2) adopts in part, over Plaintiff’s objection (ECF No. 54), Judge Denney’s R&R recommending that Plaintiff’s motion for summary judgment be denied and that Defendants’ motion for summary judgment be granted in part and denied in part; and (3) denies as moot Plaintiff’s motion for judicial notice.

**I. BACKGROUND**

Since 2016, Plaintiff’s faith declaration has been Messianic Judaism. (ECF No. 48-1 at 2.) As part of his faith, Plaintiff requires matzah, unleavened bread,

1 bitter herbs, and wine/grape juice during Passover. Plaintiff states that prior to  
2 2020, he received Passover meals in accordance with his faith. In 2020, a notice  
3 was posted stating that all Hebrew Israelites, Messianic Jews, and Orthodox Jews  
4 must sign up if they wish to participate in Passover. (ECF No. 37 Ex. 1.1.) The  
5 notice stated that they must sign up by sending a “kite” to the chaplain by  
6 January 24 and that they were required to have a declaration of either Messianic  
7 Jewish or Jewish on file. (*Id.*) At some point, Plaintiff’s name was included on the  
8 Passover list. (ECF No. 37 Ex. 1.2.)

9 An email was sent on January 24, 2020 by Richard Snyder, a chaplain and  
10 the chairman of NDOC’s Religious Review Team, to other NDOC chaplains which  
11 stated that NDOC was changing its policy regarding Passover meals. (ECF No. 37  
12 Ex. 1.4.) The email explained that “[i]n past years, those inmates who are  
13 determined to be eligible for the Common Fair Diet and choose not [to] receive  
14 CFD on a regular basis have been able to receive the 12 days of Kosher meals  
15 during Passover at no cost. [...] Effective this year, [the] inmates not receiving  
16 CFD on a regular basis and request to participate in the Passover meals should  
17 be informed that they will receive only one meal, on one day during Passover  
18 when they make their holiday meal request. Inmates already participating on the  
19 CFD will receive Kosher meals for all days of Passover as part of their regular  
20 diet.” (*Id.*) Plaintiff explains that while the NDOC Common Fare Meal (“CFM”) [a.k.a. CFD] is Kosher according to Rabbinic or Orthodox Judaism, this fact has  
21 no bearing on Messianic Judaism, and Plaintiff claims that the fact that  
22 Messianic Jews are required to adhere to Rabbinic or Orthodox standards in  
23 order to receive more than one Passover meal violates Plaintiff’s rights. (ECF No.  
24 3-1 at 13.) Plaintiff argues that in creating this policy change, Defendants acted  
25 beyond the authority prescribed in NDOC Administrative Regulation 810.  
26

27 Consistent with the January 24, 2020 email, Plaintiff received a memo as  
28 a “Passover Non-Common Fair Participant” stating that that he would receive one

1 Passover meal on the last night of Passover. (ECF No. 48-3.) Plaintiff submitted a  
2 kite on February 3, 2020, to LCC's Chaplain Davis, asking whether, despite his  
3 religious faith declaration of Messianic Judaism, he would not be supplied with  
4 matzah and certified leaven-free meals for the duration of Passover because he  
5 was not signed up for the CFM diet. Chaplain Davis responded that it was  
6 "determined by Carson City that those not already on [CFM] will only be receiving  
7 the last meal for [ ] Passover. Culinary is abiding by their determination with no  
8 exceptions." (ECF No. 48-4 at 2.) On February 7, 2020, Plaintiff submitted an  
9 informal level grievance, asking NDOC to provide him with meals necessary to  
10 observe Passover in accordance with his sincerely held beliefs as an adherent of  
11 Messianic Judaism. Plaintiff asserted that he must observe Passover and during  
12 that time he must not eat leaven or leavening agents. Plaintiff noted he had no  
13 problems receiving his Passover meals in years past. (ECF No. 48-6 at 2-5.)

14 On March 3, 2020, Defendant Deputy Director Brian Williams issued a  
15 memorandum regarding Passover 2020. (ECF No. 48-5.) He advised that NDOC's  
16 CFM "meets the religious diet restrictions of all religions recognized by NDOC,"  
17 including that it is kosher for all times of the year with the exception of Passover  
18 season, as kosher for Passover restrictions are different than those during the  
19 rest of the year. (*Id.*) For an inmate to receive a kosher for Passover meal: (1) the  
20 institutional chaplain must verify the inmate's declared faith is Jewish; and (2)  
21 the inmate had to sign up for CFM no later than 7 days prior to the start of  
22 Passover. The memorandum went on to state that for that year only, NDOC was  
23 "attempting to obtain additional kosher for Passover meals as to permit Jewish  
24 inmates who are sincere about their religious beliefs of keeping kosher for  
25 Passover to participate in the Passover meal program regardless of whether both  
26 of the two steps noted above have been appropriately complied with by the  
27 inmate." (*Id.*) This was described as a "one-time accommodation" and beginning  
28 in 2021, "all inmates who desire to participate in the Passover meal program must

1 be identified as Jewish (step 1) and be on the CFM at the time of Passover (step  
2 2).” (*Id.*) To take advantage of the exception, inmates were instructed that they  
3 “must inform the institutional chaplain at [his] facility via inmate request  
4 form/kite within two calendar days of receiving this memo.” (*Id.*) The memo also  
5 noted that while NDOC was contacting vendors in an attempt to make this one-  
6 time accommodation, there was no assurance that the meals would be available  
7 in time for Passover. (*Id.*)

8 Having not received a response to his informal level grievance, Plaintiff filed  
9 a first level grievance on March 31, 2020. (ECF No. 48-6.) On April 8, 2020,  
10 Waters responded to Plaintiff’s informal level grievance, stating in pertinent part:

11  
12 Information available through Jewish Voice Ministries indicates that  
13 while some Messianic Jews do follow Jewish dietary laws, that there  
14 is no such requirement for Messianic Jews to observe Jewish dietary  
15 laws. Those who do not participate in the [CFM] but then want to  
16 participate in the special food available during Passover have  
17 additional questions raised about the sincerity of their beliefs on this  
18 subject. It appears that your desire to participate in the Kosher for  
19 Passover meals is a matter of personal preference. Your grievance is  
20 denied.

21 (ECF No. 48-6 at 7.)

22 Plaintiff filed a second level grievance on July 22, 2020. (ECF No. 48-6 at  
23 11-14.) Garrett denied Plaintiff’s first level grievance on November 24, 2020,  
24 asserting that Plaintiff had not been on CFM, and did not qualify for Passover  
25 meals for all days according to the new directive. It asserted that Plaintiff had  
26 time to “comply with this change,” presumably referring to the requirement that  
27 he sign up for CFM to receive all Passover meals. Finally, he reiterated Waters’  
28 stance that there were questions raised about the sincerity of his beliefs. (ECF  
No. 48-6 at 10.)

Wickham denied Plaintiff’s second level grievance on January 20, 2021. He  
noted the NDOC policy change regarding Passover meals in 2020, and that

1 Plaintiff was not receiving CFM. Therefore, Plaintiff did not qualify for kosher  
 2 meals for all days of Passover 2020. He reiterated the prior response that not  
 3 receiving CFM on a regular basis and then requesting to participate in Passover  
 4 results in “additional questions [being] raised about the sincerity of [his] beliefs  
 5 regarding this issue.” (ECF No. 48-6 at 15.)

## 6 **II. R&R ON MOTIONS FOR INJUNCTIVE RELIEF AND/OR A PROTECTIVE** 7 **ORDER**

8 Judge Denney’s R&R recommending that Plaintiff’s motions for injunctive  
 9 relief and/or a protective order be denied was filed on February 24, 2023. (ECF  
 10 No. 51.) Plaintiff had until March 10, 2023 to file an objection. To date, no  
 11 objection to the R&R has been filed. For this reason, and as explained below, the  
 12 Court adopts the R&R, and will deny Plaintiff’s motions for injunctive relief  
 13 and/or a protective order.

14 The Court “may accept, reject, or modify, in whole or in part, the findings  
 15 or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where  
 16 a party fails to object to a magistrate judge’s recommendation, the Court is not  
 17 required to conduct “any review at all . . . of any issue that is not the subject of  
 18 an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v.*  
 19 *Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) (“De novo review of the  
 20 magistrate judges’ findings and recommendations is required if, but *only* if, one  
 21 or both parties file objections to the findings and recommendations.”) (emphasis  
 22 in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that  
 23 the Court “need only satisfy itself that there is no clear error on the face of the  
 24 record in order to accept the recommendation.”).

25 Because there is no objection, the Court need not conduct de novo review,  
 26 and is satisfied Judge Denney did not clearly err. Here, Judge Denney  
 27 recommends denial of Plaintiff’s motions for injunctive relief and/or a protective  
 28 order because NDOC Deputy Director Brian Williams has submitted a declaration

1 stating that NDOC is in the process of updating its Administrative Regulation to  
2 clarify that signing up for the CFM diet will not be a prerequisite to receive Kosher  
3 meals for every day of Passover and that all institutional chaplains have been  
4 notified of this policy. (ECF No. 51 at 5.) Thus, Plaintiff cannot show that there is  
5 a likelihood of irreparable harm in the absence of preliminary relief. (*Id.* at 5-6  
6 (“While Plaintiff might seek a *permanent* injunction if he is successful on  
7 summary judgment or at trial, his request for *preliminary* injunctive relief is  
8 rendered moot by NDOC’s action.”).) The Court agrees with Judge Denney. Having  
9 reviewed the R&R and the record in this case, the Court will adopt the R&R in  
10 full.

### 11 **III. R&R ON MOTIONS FOR SUMMARY JUDGMENT**

12 Plaintiff filed a motion for summary judgment on November 15, 2022,  
13 which argues that the evidence Plaintiff has submitted establishes that there is  
14 no genuine issue of fact for trial and Defendants are liable as a matter of law.  
15 (ECF No. 37.) Defendants filed a motion for summary judgment on February 6,  
16 2023, which argues that the evidence establishes that Defendants did not  
17 substantially burden Plaintiff’s religious practice, that the March 3, 2020  
18 memorandum was reasonably related to legitimate penological interests, that  
19 Defendants did not favor one religion over another, that Defendants Tim Garrett  
20 and Gail Waters did not personally participate in any alleged violations, and that  
21 Plaintiff failed to exhaust administrative remedies. (ECF No. 48.)

22 Judge Denney’s R&R found that there is a genuine issue of material fact as  
23 to whether Defendants substantially burdened Plaintiff’s religious exercise. (ECF  
24 No. 52 at 15.) The R&R acknowledged that the procedure of requiring an inmate  
25 to participate in the CFM diet in order to receive Passover meals effectively  
26 “require[es] an inmate to choose between a benefit (here, a non-CFM diet) and a  
27 tenant of his religion (leaven-free meals for all of Passover)” which can constitute  
28 a substantial burden. (*Id.* at 14.) However, the R&R stated that there is a genuine

1 issue of fact as to whether Plaintiff's religious exercise was burdened given that  
2 Plaintiff was offered the one-time opportunity to sign up for the Passover meals  
3 without signing up for the CFM diet. (*Id.* at 15.) The R&R then found that there  
4 is a genuine issue of fact as to whether the policy change was reasonably related  
5 to legitimate penological interests, given that Plaintiff had previously received  
6 Passover meals without being on the CFM diet and that while the stated purpose  
7 of the policy change was to prevent increased costs due to insincere inmates  
8 attempting to obtain Passover meals, Defendants never contended that Plaintiff's  
9 beliefs were insincere. (*Id.* at 16-17.) These points led to the recommendation that  
10 both Plaintiff's and Defendants' motions for summary judgment be denied.

11 The R&R addressed Plaintiff's Establishment Clause claim in which  
12 Plaintiff alleges that Orthodox or Rabbinical Jews got their Passover meals while  
13 Messianic Jews only got the last meal. The R&R noted that Plaintiff supplied a  
14 declaration from inmate Justin Langford, who states that he was not on the CFM  
15 diet but received all his Passover meals. The R&R stated that since Langford did  
16 not state whether he was an Orthodox/Rabbinical Jew or a Messianic Jew, that  
17 Plaintiff had not created a genuine issue of fact as to whether Defendants favored  
18 one religion over another and therefore the R&R recommended granting  
19 Defendant's motion for summary judgment on Plaintiff's Establishment Clause  
20 claim. (*Id.* at 20-21.) Finally, the R&R stated that there were sufficient facts to  
21 create a genuine issue of fact as to the personal participation of Garrett and  
22 Waters, that Plaintiff had exhausted administrative remedies, and that  
23 Defendants were not entitled to qualified immunity.

24 Plaintiff filed an objection to the R&R on March 15, 2023 which argues that  
25 the R&R erred in recommending that Plaintiff's motion for summary judgment be  
26 denied. (ECF No. 54.) Plaintiff's objection does not address the point about  
27 Plaintiff being offered the one-time opportunity to obtain Passover meals without  
28 signing up for the CFM diet, so the Court adopts, over Plaintiff's objection, the



1 R&R's finding that there is a genuine issue of material fact as to whether  
2 Plaintiff's religious exercise was substantially burdened, which leads to denial of  
3 both summary judgment motions.

4 Plaintiff's objection does not directly address the recommendation that  
5 summary judgment be granted for Defendants on Plaintiff's Establishment  
6 Clause claim. However, Plaintiff states that "[to] clarify[,] the document  
7 preparer[']s [Justin Landford] affidavit he avers that he is of the Orthodox  
8 Judaism faith and received his meals and was not on the CFM." (*Id.* at 5.)  
9 Furthermore, Plaintiff's overall argument is that the policy requiring CFM as a  
10 prerequisite to receiving all Passover meals favored Orthodox and Rabbinical  
11 Jews over Messianic Jews, since the CFM diet is based on kosher principles  
12 derived from Orthodox and Rabbinical Judaism which are not applicable to  
13 Messianic Judaism. Requiring Plaintiff to adhere to a dietary plan that his faith  
14 does not require as a prerequisite to obtaining meals that his faith does require  
15 is a burden on Plaintiff, and this burden was not placed on followers of Orthodox  
16 or Rabbinical Judaism. The Court finds that there is a genuine issue of fact as to  
17 whether Defendants favored one religion over another and therefore finds that  
18 summary judgment dismissal of Plaintiff's Establishment Clause claim is  
19 inappropriate.

#### 20 **IV. CONCLUSION**

21 It is therefore ordered that Judge Denney's Report and Recommendation  
22 on Plaintiff's motions for injunctive relief and/or a protective order (ECF No. 51)  
23 is accepted and adopted in full. Plaintiff's motions for injunctive relief and/or a  
24 protective order (ECF Nos. 26, 27) are denied.

25 It is further ordered that Judge Denney's Report and Recommendation on  
26 Plaintiff's and Defendants' motions for summary judgment (ECF No. 52) is  
27 adopted in part and rejected in part. Plaintiff's motion for summary judgment  
28 (ECF No. 37) is denied in full and Defendants' motion for summary judgment



1 (ECF No. 48) is denied in full.

2 It is further ordered that Plaintiff's motion for judicial notice (ECF No. 56)  
3 is denied as moot.

4  
5 DATED THIS 16<sup>th</sup> day of June 2023.

6  
7 

8  
9 ANNE R. TRAUM  
10 UNITED STATES DISTRICT JUDGE  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28